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200 FIBERG PARKWAY, SUITE 1001  
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**MAILED**

OCT 14 2010

**OFFICE OF PETITIONS**

Decision on Petition

In re Application of Hiroshi Mizutani :  
Application No. 09/372,322 :  
Filing Date: August 11, 2009 :  
Attorney Docket No. NEM-01601 :

This is a decision on the "Petition to Withdraw Abandonment Under 37 CFR §1.181" filed April 29, 2004. The Office regrets the delay in the issuance of the instant decision.

The petition is **granted to the extent indicated herein**.

A Notice of Appeal was filed May 19, 2003.

Petitioner filed a request for a 5-month extension of time on December 15, 2003. The request was accompanied by payment of \$2,010 for the extension of time.

Petitioner also filed Application No. 10/737,261, which is a continuation of the instant application, on December 15, 2003.

The Office mailed a Notice of Abandonment on April 20, 2004. The notice stated,

This application is abandoned in view of ... Applicant's failure to timely file a proper reply.... A reply was received on 15 December 2003 ... which is after the expiration of the period for reply (including a time of 4 month(s)) which expired on 19 November 2003.

The petition asserts the December 15, 2003 request for a five-month extension of time was timely. The Office agrees the December 15, 2003 payment for an extension of time was timely. In view of the extension of time, the last date of the period for filing an appeal brief was Friday, December 19, 2003. An appeal brief was not filed on or before December 19, 2003. As a result, the appeal was dismissed. As no claim was allowed, the application became abandoned on December 20, 2003. *See MPEP 1215.04*

In view of the prior discussion, Office records will be corrected to indicate the date of abandonment for the application is December 20, 2003.

The instant petition is *not* granted to the extent, if any, Petitioner is asserting the application is not currently abandoned. A brief was not timely filed and no claim had been allowed. Therefore, the application is abandoned.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are NOT permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

Further correspondence with respect to this matter may be submitted as follows:

By Internet: A request for reconsideration may be filed electronically using EFS Web.<sup>1</sup> Document Code "PET.OP" should be used if the request is filed electronically.

By mail: Mail Stop Petition  
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Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



Charles Steven Brantley  
Senior Petitions Attorney  
Office of Petitions

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<sup>1</sup> General Information concerning EFS Web can be found at <http://www.uspto.gov/patents/process/file/efs/index.jsp>.